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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/1369/2006 – SM[BR] Date 20/11/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
JINDAL ROLLING MILLS
9TH KM STONE, DELHI ROAD, HISAR, HARYANA

JINDAL ROLLING MILLS Appellant
Vs
C.C.E. ROHTAK Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1494 / 2008- **SM[BR]** dated 4.11.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. ROHTAK
SCO NO,6 SECTOR 1, ROHTAK.
2. Adv. / Consult SHRI K.K. GUPTA ADV.
B-137, SECOND FLOR RAMPRASTHA COLONY
GHAZIABAD-201011[U.P]

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg, 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
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12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

Excise Appeal No. 1369 of 2006 (SM)

[Arising out of the Order-in-Original No. 01/Commr/R.P./ 2006 dated 27/01/2006 passed by The Commissioner (Appeals), Customs & Central Excise, Rohtak.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Jindal Rolling Mills Ltd. Appellant

Versus

CCE, Rohtak Respondent

Appearance

Shri K.K. Gupta, Advocate – for the appellant.

Shri R.K. Saini, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 04/11/2008.

Final Order No. 1494/08-SM(BR) Dated : 4-11-08

Per. Rakesh Kumar :-

The appellant who manufactured non-alloy steel bars, rounds and flats falling under tariff items 72.04 were functioning under compounded levy scheme under Section 3A of the Central Excise Act during the year 1999-2000. Sub-rule (2) of Rule 96ZP, which covers the compounded levy scheme in respect of manufacturers of ~~all rolled~~ re-rolled products of non alloy steel, provides that where a manufacturer does not produce the ~~rolled~~ re-rolled products of non alloy steel during any continuous period of not less than 7 days and wishes to claim the abatement under ~~Section 2 under Section 3A,~~ Sub-rule (2) the abatement shall be allowed by the Commissioner subject to certain conditions specified in this sub-rule and one of the condition is that intimation of the closure is required to be given either prior to the date of closure or on the date of closure. In this case, abatement for 21 days has been disallowed either on the ground that the intimation for stoppage of production was not given on the date of stopping the production or a day prior or when the period of closure started during ~~the~~ a particular month and continued till during the next month, fresh intimation was not given. In the cases where the intimation was given on the day next to the day on which production was stopped, the ~~commission~~ Commissioner has not allowed abatement for the day on which intimation was given.

2. Heard both the sides.

2.1 Shri K.K. Gupta, advocate, the learned counsel on behalf of the appellant, pleaded that on one occasion the factory was closed on 23/06/99 (2350 hrs.) for which intimation was given on next day morning and it continued to remain closed till 05/07/99 and was re-started only on 06/07/99 and there is no requirement in the rule that if the stoppage of production started in a month continues till next month, a fresh intimation is required. As regards the closure on other occasions, he pleaded that on each time the production was stopped at 2330 or 2350 hrs. and intimation regarding the stoppage of production alongwith other relevant information like meter reading, closing stock etc. was furnished next day in the morning. He also mentioned that only on one occasion, the next day being the holiday, the required intimation was furnished on the next working day. He cited the Tribunal's judgment in the cases of **Kamakhya Steels Pvt. Ltd. vs. CCE, Meerut** reported in **2000 (118) E.L.T. 423 (Tribunal)** and also in case of **Agni Steels Ltd. vs. Commissioner of C. Ex., & Cus.,**

Calicut reported in **2006 (200) E.L.T. 555 (Tri. – Bang.)**, wherein it was held that even if the assessee's letter intimating the closure of production was not furnished on the day of stopping the production but for furnished subsequently but it contained all the relevant information, the abatement cannot be denied. He emphasized that each time the intimation regarding stoppage of production had been furnished to the department next day next morning day after working the factory till 2330 or 2350 hrs. and the intimation contained all the relevant information. In view of this, he pleaded that there is no case for denying the abatement.

2.2 The learned departmental representative pleaded that since the rule provides that for claiming abatement, the intimation regarding stoppage of production must be furnished either prior to the date of stopping the production or on the date of stopping the production and since in this case the required intimation has been furnished next day, the abatement has been rightly disallowed. He relied upon the Tribunal's judgment in the case of **V.V.S. Concast Limited vs. CCE, Kanpur** reported in **2000 (120) E.L.T. 436 (Tribunal)**, wherein it was held that intimation, as required under the provisions of Rule 96ZP (2) was a substantive requirement and not mere a technicality and hence without such a intimation the abatement could not be allowed. He also cited the

Tribunal's judgment in case of **Uppal Steels Alloys Limited vs. CCE, Meerut** reported in **2000 (120) E.L.T. 452 (Tribunal),** wherein the Tribunal holding that the submission of the required intimation to the Assistant Commissioner is a substantive requirement and not mere technicality held that abatement cannot be allowed when the intimation about abatement stoppage of production was given to the Range Superintendent and not to the Assistant Commissioner.

4. I have, carefully, considered the submissions from both the sides. In this case, I find that 5 day's abatement from 01/07/99 to 05/07/99 was disallowed on the ground that though the stoppage of production had started from 23/06/99 for which intimation had been submitted on 24/06/99, since the stoppage continued in July, a fresh intimation should have been given. Since, the stoppage of production from 23/06/99 to 05/07/99 was one continuous stoppage and the same of more than 7 days and the Rule 96ZP (2) provides for abatement in the cases of stoppage of production not less than 7 days, the abatement cannot be denied on this ground.

5. As regards the other ground for denying the abatement for one day i.e. for the date on which intimation we given, that the intimation regarding stoppage of production was not furnished either prior to the date of closure or on the date of closure, but was

furnished only on the next day, I find that the Tribunal in the case of Agni Steels Ltd. vs. CCE, Calicut (Supra) and Kamakhya Steels Pvt. Ltd. vs. CCE, Meerut (Supra) has held that even if there was some delay in intimating the closure of the unit, the abatement cannot be denied. In this case, I find that on each occasion, the factory had worked till 2330 or 2350 hrs. and the production had been stopped just before the mid-night and the intimation regarding the stoppage of production containing all the relevant information had been furnished next day in the morning – only on one occasion, the next day being a closed holiday, the intimation was given on the next working day. In view of these circumstances, following the Tribunal's judgment in the case of Agni Steels Ltd. and Kamakhya Steels Pvt. Ltd. (Supra), I find that the Commissioner's order disallowing 21 day's abatement is not sustainable and the same is set aside. The appeal is allowed with consequential relief.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK